



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### **Usage guidelines**

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### **About Google Book Search**

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

850

U. A. 202.1 Letter to W.E. Gladstone opening first circuit court at Brisbane

Gw. Austral.  
510

T 412

Cw. Austral. 4  
510

1/11/2





1

# LETTER

TO THE

RIGHT HON. W<sup>m</sup> E. GLADSTONE, M.P.

WITH THE

ADDRESS TO THE JURY

BY

HIS HONOR MR. JUSTICE TERRY,

AT THE

OPENING OF THE FIRST CIRCUIT COURT,

AT BRISBANE, MORETON BAY,

MAY 13, 1850;

AND

HIS SPEECH

AT THE DINNER GIVEN TO THE JUDGE AND MEMBERS OF THE  
CIRCUIT, BY THE MAGISTRACY AND GENTRY OF THE DISTRICT.

SYDNEY:

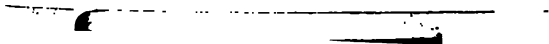
PRINTED BY KEMP AND FAIRFAX.

LONDON: J. RIDGWAY, PICCADILLY.

1850.



*Handwritten signature or scribble at the bottom of the page.*



## LETTER.

---

Sydney, October 30, 1850.

SIR,

Having been induced to throw into the form of a little *brochure* the address made by me to the jury, on the occasion of holding the first Circuit Court, for the newly formed settlement of Moreton Bay, I take the liberty—which I trust you will pardon—of transmitting it to you,—as from the deep interest you have evinced for the welfare of The Australia Colonies, I am induced to hope, that this address may be deemed not unworthy of your acceptance and perusal.

The district of Moreton Bay lies about 500 miles to the northward of Sydney. Its adaptation to agricultural purposes is of admitted superiority, by reason of the large quantity of good land it contains,—of its capability of extension to the rich lands adapted for pastoral enterprise recently discovered along the north-east coast of New Holland,—and of the regular succession of rains at the usual and required seasons of the year, the uncertainty of which imparts an arid character to the soil of other parts of New South Wales. These advantages, together with the important one,



that from its position on the verge of the tropics, it possesses capabilities adapted to the growth of almost all European vegetable productions, as well as the luxuriant productions of the East, present a combination of natural resources, which perhaps no British settlement hitherto formed possesses in a corresponding degree.

As the time has arrived when Great Britain and Ireland can no longer contain within their limits the native-born inhabitants with which they teem,—and a provision for their surplus population demands attention with a pressure that cannot be resisted,—it occurred to me that this was not an inopportune occasion for inviting the notice of a Statesman occupying your prominent station in the estimation of your Country, to the wide and well-adapted field for emigration which the district of Moreton Bay presents.

I am also led to suppose that this address may be read by you with some interest, from your having been the friend and colleague of the late lamented SIR ROBERT PEEL, who took a leading part in promoting the reform and improvement of the criminal law, as it succinctly states some results of many years' experience in the Criminal Courts of this Colony. It happened that I was an attentive witness of his services in this good cause,—and a very constant observer of the proceedings in Parliament at the time when three Ministers of the Crown, in different branches of our jurisprudence and our policy, introduced those measures, the soundness of which time has tested,—which have been made the basis of all subsequent legislation,—and which may now be regarded as part of the settled and permanent policy

of England. I allude, to that period when by one Minister of the Crown—SIR ROBERT PEELE,—our jury system and our criminal code was revised;—when, by another—Mr. HUSKISSON,—the wretched fabric of commercial prejudice and antiquated policy was overthrown;—and when, by another—Mr. CANNING,—the foreign policy of England was conducted and sustained with a spirit and energy worthy of a country taking the van of the nations of Europe—in promoting the liberties, and securing the peace and happiness of mankind.—Of these principles the British Empire recognises in you a faithful representative, and a distinguished advocate.

In conclusion, may I further request that you will accept these few pages as a tribute of personal respect,—and as an assurance that I bear in grateful remembrance the polite attention I experienced at your hands, on the occasion of my late visit to England.

I have the honor to be, Sir,  
 Your very obliged and faithful servant,  
 R. TERRY.

To The Right Honorable  
 W. E. Gladstone, M.P., &c.



# CONTENTS.

---

	Page
Advantage of Circuit Courts to the District of Moreton Bay . . .	8
Origin, Progress, and Advancement of the District of Moreton Bay	9
Trial by Jury :—Reasons for Englishmen's attachment to it . . .	11
What constitutes the Issue in Criminal Cases . . . . .	12
Grounds for excluding hear-say Evidence . . . . .	13
On consistency of testimony,—its importance considered . . . .	ib.
On direct evidence,—circumstantial evidence . . . . .	14
Duties of Juries, as distinct from those of Judges . . . . .	15
The expressions,—“A prisoner is entitled to the benefit of a doubt,” and that “The Judge is counsel for the prisoner”—explained	ib.
Observations on the expression, “’Tis better that ninety-nine guilty men should escape than that one innocent man should suffer	17
Lynch's Case . . . . .	ib.
Rare occurrence of punishment being inflicted on an innocent man	18
Extensive Jurisdiction of Magistrates in New South Wales . . .	19
Magisterial office,—its importance,—in what respect it differs from the office of a Magistrate in England . . . . .	20
The main source and cause of Crime . . . . .	21
Intoxication,—“the hot-bed from which crime springs” . . . .	22
Instances in illustration,—The Campbelltown murder. Scene in Court, respecting the Gold Medal of Albuera . . . . .	23
Encouragement of innocent recreations, and influence of Temperance Societies in weaning men from habits of intoxication . . . .	24
Influence of religion and education, in the attainment of the same object . . . . .	ib.
Advantages of Education,—much needed in Australia . . . . .	25
Champly's and Shirby's Case . . . . . (Appendix)	27
Lynch's Confession . . . . .	28
Blackstone's Case. An incorrigible convict . . . . .	36
Speech, at public Dinner. . . . .	38



## ADDRESS.

---

AT the opening of the Court, at 10 o'clock, his Honor Mr. JUSTICE TERRY delivered the following Address:—

GENTLEMEN,

On this the first occasion of holding a Circuit Court for this rapidly advancing district, it is perhaps but befitting that I should address some observations to you on the important business that has brought us together.

The establishment of a Circuit Court—I need scarcely apprise you—is analogous to the institution of the Court of Assize in England, which is composed of two judges of the superior Courts of common law, who are twice sent every year on circuits all round the kingdom, to whom the duty is confided of superintending the trial of matters of fact as well as that of deciding matters of law, and transacting other judicial business. If in England, where time and distance are wonderfully shortened by steam and railway communication, it is still deemed a great advantage that Circuit Courts should be held, in order that the administration of the laws might be brought home to all the inhabitants of the land, of far greater necessity and advantage may it be deemed that in this remote district from the seat of Government, this venerated institution of our native land should be established. Whether this Court, as a Circuit Court, should be continued,

or whether, for it, in progress of time, in this district, rapidly rising into importance—a Resident Judge should be substituted, I will obtrude no opinion:—but it is, at least, just and necessary, that there should exist some Court here, in which all the laws to which the members of this community are amenable should be administered. Its establishment is the right of the community, in analogy to the principle and practice in England of bringing the administration of the laws to the people's homes. It is, moreover, a convenience and advantage in point of economy. Indeed, from the impediments which great expense, and the long absence of witnesses from home have hitherto presented, it is to be apprehended this great evil has arisen—that only some cases of aggravated crime have been subjected to trial in Sydney, whilst many offences that merited exemplary punishment have been committed from the prospect of impunity on which those who committed them calculated, by reason of the difficulties in the way of trial created by the causes to which I have adverted. It cannot be commended, yet it cannot be wondered at, that many would prefer that serious injuries, to property and even to person, should altogether go unpunished, rather than be subjected to the law's delay and the law's expense, and the inconvenience of long absence from home, incident of necessity to a journey to Sydney. The establishment of this Court removes all difficulties and inconveniences of this nature. The half-yearly appointed sittings may now be useful, not only for the punishment of crime, but for what is more desirable, for its prevention,—by deterring those who may be now hesitating on the brink of crime from plunging into its commission, when they are aware and assured that there is now as easy a mode and as effective a machinery for bringing criminals to justice in Brisbane, and throughout the wide district of Moreton Bay, as exists in Sydney,—and that punishment will follow as quickly and as certainly on the track of guilt as in any town or county in the great Country from which we have all come. The hope of impunity, then,

from delay, distance, and expense, that the criminal may hitherto have indulged in, expires at the creation of this Court to-day.

And now allow me to congratulate you on the important event, that this district, formed into a free settlement but a few years ago, has so grown in population, wealth, and general importance, as so soon to obtain for it the introduction of the much-prized institution of our native land—Trial by Jury.

The origin, progress, and advancement of such a district, merits and demands some notice.—Within the memory of most of us, the first notice taken of this settlement is in the report of Commissioner Bigge, who, about 1824, recommended it as “a receptacle for convicts who had been transported for long terms and for heavy offences, as well as for those who had, during their residence in the settled districts, showed that they required a more severe and rigid system of discipline than those districts were capable of affording.” At that time its boundless and fertile plains were unknown,—and no higher estimate appeared to have been formed of a country which pastoral enterprise has since covered with many thousands of cattle and many tens of thousands of sheep, than that it “would be found capable of growing sufficient wheat for the convicts it contained.” It continued from 1826 to 1842 the sad receptacle of criminals, for which its fitness was first pointed out—a disastrous period of suffering and of crime,—which it were as well for the district that its memory should be altogether blotted out from the page of its history. In 1842, however, it was opened as a free settlement by Sir George Gipps. Since then it has progressed rapidly. The healthy stream of a free population was poured into it, which has been daily gaining renewed and augmented strength. The rich back country extends through Darling Downs and New England till it joins the older districts of the Hunter. The rising towns of Brisbane and of Ipswich have doubled, perhaps tripled, their



population since the census of 1846. The customs revenue, which in that year was about £100, will, I am assured, in the present year not fall short of £2500. And—more important still—a beneficial and much-needed change has taken place in the moral aspect of the population, through the arrival of four immigrant ships direct, in addition to several drafts from vessels arriving at Sydney. One church is already erected;—three or four others are in progress of erection by various religious denominations—who, I am happy to learn, live in that friendship and in the interchange of those charities of life which it is alike the duty and interest of those engaged in a common career to cultivate and cherish. This brief sketch of the short history of your young settlement may not be deemed inappropriate on a memorable occasion like the present, which will not, perhaps, be forgotten by many who now hear me, and who may hope to live to be witnesses of the day when the town now called Brisbane, the "*urbem quam dicunt Romanam*," consisting of scattered cottages, shall assume and put on the importance of a great commercial city, which is denoted to be its destiny,—by the vast extent of rich and fertile country to which it is the principal port,—the varied resources with which it abounds,—its climate, mild and salubrious as that of Naples,—its productive capabilities, alike for European and tropical vegetation,—its noble river, the navigation of which, by skilful surveys, has, of late years, been much improved, and it is to be reasonably hoped, may at no distant day, be navigable for all commercial purposes.

It is assuredly an interesting event in such a district—peopled by Englishmen, who love to carry with them the laws of their native land in whatever country they may plant themselves—that they are this day called upon for the first time to exercise the right of trial by jury,—that right which they have at all times cherished as their peculiar and inalienable birthright,—and for the preservation of which in its integrity the noblest efforts and sacrifices of English patriotism have been made. It is unnecessary, I feel, that I should

enlarge upon the merits of this important institution, to which your earliest attachments cling;—and as, moreover, trial by jury hath been used time out of mind by the English nation, and the origin of it is so remote that it has not hitherto been satisfactorily traced.

The long-cherished attachment of Englishmen for trial by jury is to be found, I apprehend, like their fond adherence to their other institutions, in good sense, and in the plain and intelligible principle that a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. The faithful and satisfactory performance of their important functions is assured and guaranteed by three of the strongest inducements and motives to human action—for, first, the natural love of justice will not permit any man to sanction damage to the name or property of his neighbour, or an invasion of his liberty, on insufficient testimony of his guilt;—secondly, the sense of his performing a sworn duty, in which the liberty—it may be the life—of his fellow-citizen is at stake, will prompt him to weigh well the grounds on which he acts before he consigns him to punishment;—and, thirdly, a motive of interest will operate in restraining him from doing injustice to others, knowing that he who is sitting in judgment upon others to-day may possibly to-morrow be in a position in which his own good name, his property, or mayhap his liberty or life, may be affected.

Without, then, venturing to suggest new motives for an attachment to an institution towards which old English feelings reveal a strong devotion, it may be permitted to me at present to invite your attention to the particular duties you are this day assembled to discharge, and to point out the line of demarcation that separates the functions of a judge from those of the jury. All questions, then, of pure fact belong peculiarly to the province of the jury, who are to be guided in their decision by their conscientious judgment and belief; but in doing so, they are to confine themselves

to the issue,—the definition of an issue being, “*a particular state of facts asserted on one side and denied on the other,*”—which, in criminal matters, is the assertion of the guilt of the prisoner on the part of the Crown, arising out of the facts proposed to be proved against him, and its denial by the accused,—the question of guilt or innocence being the issue submitted for determination. This conscientious judgment must be exercised by the juror, moreover, on the evidence, and the evidence only, adduced on the trial. He cannot give a verdict on his own private knowledge:—for not only it may be that the private grounds of belief might not amount to legal evidence, but, moreover, such knowledge is not acted upon under the sanction of an oath, and it is only on the sworn testimony of witnesses that it is competent for a jury to pronounce a verdict. A juror may be examined as a witness, but no doubt, if he were to know any facts material in the case, it would be better for him, on being called and previous to his being sworn, to decline sitting as a juror, and to become a witness, as the respective duties of jurors and witnesses are, though not inconsistent, distinct and different; and, as the mind of a juror should be free from all bias.—On application to the Court, he would, no doubt, be released from a position in which, from previous impressions, it may be difficult for him to pronounce an unprejudiced opinion. In deciding upon evidence, moreover, the principles and rules which regulate its admissibility and its effect and its application to the purposes of proof, must be carefully kept in view “The law,” says Mr. Starkie, “wisely requires that the evidence should be of the purest and most satisfactory kind which the circumstances admit of, and that it should be warranted by the most weighty and solemn sanctions.” This, indeed, is but the consequence of one great and important law, viz., that the best evidence shall be adduced; the effect of which is, to exclude inferior evidence whenever it is offered in place of a superior degree and more convincing

nature. Hence, except in particular cases, where it is admissible as part of the *res gestæ*, evidence of facts with which the witness is not acquainted of his own knowledge, but which he merely states from the relation of others, is inadmissible on two grounds,—first, that the party originally stating the facts does not make the statements under the sanction of an oath;—and, secondly, that the party against whom the evidence is offered would lose the opportunity of examining into the means of the knowledge of the party making the statement.

In an address like the present, it would be impracticable to point out how far the testimony of witnesses may be affected by interest—by character—by the manner of giving their evidence—by the probability of their statements—by their opportunities of knowledge of the transaction respecting which they depose—and by the consistency of their narrations. On these several points, as occasion arises, a fitting opportunity for making observations may present itself. I will at present only advert to the last point—the consistency of testimony, which is a strong test for judging of the credibility of witnesses. I advert to this, not only on account of its importance, but because, from a long experience in criminal matters, I have observed, “*experto credite*,” it is the point on which, when the defendant’s case is weak, the evidence affecting him is most vehemently assailed, and the attention of the jury attempted to be diverted from the real and substantial issue they have to try, to unsubstantial and immaterial variances. Witnesses worthy of full credit, in their narrative of the same transaction, may vary on minute collateral points in their account of it. Such partial variances may be ascribed to inadvertence, inattention, or defect of memory. Such variances, however, so far from weakening, often impart strength to the testimony, by showing the absence of previous concert or conspiracy;—but where the evidence is preconcerted, it is arranged with such a coincidence in minute matters as to induce the suspicion of confederacy and fraud.

I have dwelt at some length on this point, because it is a most important part of a juror's duty to determine whether discrepancies in testimony be immaterial or otherwise. The whole doctrine upon the subject is this succinctly expressed by Mr. Starkie:—"It has been well remarked by a great observer, Dr. Paley, that the usual character of human testimony is 'substantial truth under circumstantial variety.' The real question must always be, whether the points of variance and of discrepancy be of so strong and decisive a nature as to render it impossible, or at least difficult, to attribute them to the ordinary sources of such varieties—inattention or want of memory."

As to the degree of evidence which should satisfy the minds of a jury, it is sufficient to abide by the rule, that in all criminal cases whatsoever, it is essential to a verdict of condemnation that the guilt of the accused should be fully proved. Absolute mathematical or metaphysical certainty is not essential, and, in the course of judicial investigation, would be equally unattainable. Direct evidence—that is, where witnesses depose to facts of which they have actual or direct knowledge—is generally the most satisfactory. Frequently circumstantial or presumptive proof, however, by which is meant, that degree of circumstantial evidence which is sufficient to produce conviction on the minds of the jury of the truth of the facts in question, is capable of reaching the highest degree of human probability. This is fortunate for society, as especially crimes of great enormity, usually done in secret, can rarely be committed without affording vestiges by which the offender may be traced and ascertained. Of this, a remarkable instance was afforded at the trial of Thurtell for the murder of Weare, about twenty-five years ago, at which I heard the Judge (Mr. Justice Park) who tried him declare that, though no person had seen him doing the foul deed, he (the Judge) was "as convinced of his guilt as if he had seen him perpetrate it with his own mortal eyes."

Having thus adverted to a few of the leading principles of

evidence which juries in the present session may be called upon to apply practically, it is right that I should apprise you of the province of a judge, as distinct from yours. On him rest the duty and responsibility of defining the law. For instance, he may define for you that burglary is the breaking or entering by might into a dwelling-house with intent to steal;—that to constitute this offence there are certain incidents, as to the *time* of committing it, the *place*, the *manner*, the *intent*, the *property stolen*. Having thus defined the offence, it becomes the province of the jury to determine whether the facts proved establish it. He recapitulates, in greater or less degree, as he may deem necessary, the statements of the witnesses, and offers such observations thereon as he may consider calculated to conduct the minds of the jury to a correct conclusion;—but it is their province to determine for themselves the credit and weight to which the witnesses are respectively entitled, and to decide whether, upon the whole, the preponderance of proof is in favour of guilt or innocence. This is, indeed, their peculiar, exclusive right and duty, which they cannot delegate to others—which they cannot share with the judge; for they are not bound by the observations of the judge on the facts, further than their own judgments concur in them;—nay, they are at liberty to reject them altogether, and adopt an opposite opinion. In a word, it is the province of the judge to propound the *law*, that of the jury to adjudicate and determine upon the *facts*;—

*“De jure judicant judices, de facto jurati.”*

Before leaving this branch of the subject, I deem it advisable to explain the proper sense in which two familiar expressions in the administration of criminal justice should be understood, as respecting them much misapprehension in some quarters prevails. These are, that “a prisoner is entitled to the benefit of a doubt,” and that “the judge is counsel for the prisoner.” Unquestionably the prisoner is

fully entitled to the benefit of a doubt, and if the jury doubt of his guilt they are bound to acquit him, for neither a mere preponderance of evidence, nor any weight of preponderating evidence, is sufficient to sustain and justify a verdict of guilty, unless it generate full belief of the fact to the exclusion of all reasonable doubt. But, on the other hand, if the facts proved in evidence are such as to a moral certainty actually exclude every hypothesis but the one of guilt, proposed to be proved, the jury are bound by the evidence, and bound to pronounce their verdict accordingly. A prisoner on his trial is not without his right too, and his right is to have a verdict of the jury, whether of guilt or of innocence. If the facts proved, with which alone the jury have to deal, satisfy them of his guilt, they have no alternative but to act upon their convictions; if otherwise,—if from distrust in the testimony of witnesses,—in the improbabilities of the charge,—or other causes, they are not so satisfied, the existence of such an earnest, serious, well-considered doubt negatives the assumption of their being satisfied, and in that event he is entitled to be acquitted; but such a doubt must arise on the evidence alone, and care must be taken not to draw doubts from any extrinsic and illegitimate source, such as an opinion that the law is too severe, influencing a juror to say or to feel, that if the punishment were light he would find a verdict in one way, but as it is severe he will find it in another. Neither the jurors nor the judge are the framers of the law. We are not responsible for its enactments, but we are both bound to obey it, and administer it as we find it. Vague notions of mercy, arising perhaps from private knowledge that the accused party is charged with the support of a family, are an equally illegitimate excuse for the intrusion of fabricated doubts into the jury box. From errors of this kind a juror will be effectually protected by a strict attention to the juror's oath, which is, that "you well and truly try, and a true verdict give according to the evidence." Another expression, akin to the one I have noticed, and which

sometimes unduly favours unsubstantial doubt, is, "that 'tis better that ninety-nine guilty men should escape, than that one innocent man should suffer." No doubt, it would be a grievous wrong, to be deeply deplored, that an innocent man should suffer unmerited punishment,—but I believe that criminal justice is now administered in this country, with as much freedom from imperfections of this kind as can reasonably be expected or desired ;—but, let it be borne in mind on the other hand, that a cruel wrong is inflicted on society where a guilty man is tried and acquitted, either—from the imperfection of the testimony, or—of the tribunal before which he is tried. I have had much professional and judicial knowledge of cases of this kind. Of these cases I may mention one, which was so remarkable and disastrous that it can never be erased from my memory,—and never mentioned or thought by me, but with a deep impression, that it is scarcely less the duty and interest of society that a guilty man should be punished, than that an innocent man should not suffer unmerited punishment.

The case was shortly this. About the year 1835, when I happened to hold the office of Assistant Crown Prosecutor, it was allotted to me to conduct a prosecution against several persons,—servants on an estate near Berrima,—charged with the murder of a man in the same employment. The trial lasted the whole day, and the evidence variously affected the prisoners ;—but there was one of the prisoners—John Lynch . —on whom the evidence had fixed a more prominent part in the perpetration of the deed than the others. Towards the close of the trial, a very material witness, and one who was to have proved that Lynch had been seen, on the day of the murder, within a short distance of the spot on which an attempt was made to consume the body by fire, and on other points to bring guilt completely home to him, appeared in the witness-box in such a state of intemperance that his testimony was valueless. To that incident I attributed it,—as I did not hesitate at the time to avow,—that the prosecution failed, and



Lynch with the others was acquitted. 'Tis true, the presiding judge (the present Sir William Burton) most deservedly imposed a fine of £50 on the delinquent witness, who was the overseer of the estate on which the prisoners were convicts. This occurred in 1835,—and in six years afterwards, during the absence of the present respected Attorney-General in England,—his office devolved on me, and it became my duty, at the Berrima Assizes of that year, to prosecute this same Lynch for a murder perpetrated under circumstances of great enormity.—For that murder he was tried, convicted, and executed. But the worst respecting him remains yet to be told. In the interval between his acquittal in 1835, and his conviction in 1842, he committed nine distinct murders, making the sum of his terrible guilt to amount to ten murders, to which he confessed previous to his execution!!—and in this admitted catalogue of his crimes, he acknowledged that the murder of his fellow-servant, on the estate near Berrima, was one in which he had a principal share. To add the greater guilt to deeds so horrible, these crimes were perpetrated under circumstances of atrocity to which, from his own narrative taken down from his lips, the records of crime in this or any other country furnish no parallel,—a memorable and dreadful example of the calamity that may befall a community when a man, charged with a serious crime, of which he is guilty, is tried and acquitted, and let loose again upon society—a far more dangerous pest than before—emboldened by impunity with fresh desperation and augmented hardihood to enter anew upon a career of crime, and calculating upon the difficulty of the proof of guilt, of which—his experience of the ordeal through which he has lately passed—inspires a natural assurance. Grievous as is the wrong—one I believe rarely inflicted—of unmerited punishment being inflicted on an innocent man,\*—the wrong is grievous too—and one perhaps of far more frequent occurrence—of guilty men being

\* See Appendix A.

permitted to escape with impunity:—for we must bear in mind that, besides the mercy due to an individual, there is a mercy at least as imperative involved in the justice due to the public, in securing the safety of their lives and the protection of their property.\*

The expression that the judge is counsel for the prisoner is inaccurate. To be of counsel to a party implies the duty and office of being his advocate. Now, it is no part of the province of a judge to act the part of the prisoner's advocate. He is certainly bound to exclude from the consideration of a jury all such evidence as is likely to embarrass, mislead, or prejudice them in the course of their inquiry,—to strip the case of every extrinsic topic,—and to confine the attention of the jury to the issue they have to try:—in other words, to see that the prisoner has a fair trial. So far the judge may be said to be counsel for the prisoner, but the meaning of the expression "hath this extent—no more."

Having adverted to the principal rules of evidence which are likely to be brought into practical operation in the course of every trial in which we may be engaged, I may observe that they generally may be found no less useful in conducting business in the inferior Courts. It is in these Courts that the principal share of business connected with the administration of justice is carried on. The sittings of the Supreme Court in this district are only periodical, and take place at distant intervals of time, but the Magistrates' Court is daily open—it is *there* that the ordinary and general business of the country is transacted. In New South Wales, the jurisdiction of these Courts is more extensive than in the parent Country, combining with the powers committed to them for the purpose of administrative justice in criminal matters, a large portion of that jurisdiction in civil affairs which is exercised by the Judges of the County Courts in England. The powers of Justices under the Servants' Act make them the judges in all disputes

\* See Appendix B 1 and B 2.

to the extent of £30, between artificers, manufacturers, journeymen, workmen, shepherds, and other male servants engaged on any station or premises. They are thus empowered under the provisions of this Act to adjudicate,—it may be said,—on all contracts between the employed and the employers of labour throughout the country—the cases of this description which find their way to the Supreme Court being only where the magnitude of the account calls for its interposition, and are so few as scarcely to constitute an exception.

There are various other parts of magisterial jurisdiction, such as the importance of due attention to the forms of law, in admitting to bail,—in taking recognizances,—and other ministerial duties, on which, if time permitted, I should be glad to offer some observations. The points of importance are not, indeed, many, and may be easily learned with attention to the directions contained in *Plunkett's Australian Magistrate*, and *Dickinson's Quarter Sessions*—two books which, with access to Callaghan's Statutes, may make any educated gentleman quite a sufficient lawyer to perform efficiently the duties of a Magistrate in New South Wales.

Of the importance, usefulness, and dignity of the magisterial office, too high an estimate cannot be formed. Lord Coke speaks of it as an office “such as the Christian world hath not seen the like”; and the Court of Queen's Bench recently declared that Justices of Peace, acting gratuitously, were “a class of persons to whom the country was under as great obligations as this or any other nation is, or ever was, to any members of its community.” Indeed, the obligations to the magistracy in this Country are much greater than in England, by reason of the circumstance that *here* every man's means depend upon his own exertions, and require his personal superintendence. There is not as yet constituted in this country that class which we recognise and are familiar with in England, known

by the name and title of the gentry of England,—who inherit incomes—the rewards of ancestral virtue and patriotism,—or the fruits of ancestral industry—and who, by means of their time not being taxed by a close personal attention to the sources which supply those incomes, are enabled, without great inconvenience, to give much of their time to matters, appertaining to the administration of justice. *Here*, it is otherwise ordained. *Here*—each man has transported his family to a land distant from his native home,—unsustained by that support and co-operation which are derived from the encouragement and aid of kindred,—the esteem of friends,—and the confidence of neighbours to whom he is known from boyhood, and he is dependent entirely on his own energies for success in whatever pursuit he may engage. *Here*,—in short, though it cannot be said that “every rood maintains its man,” yet it may be said truly that to every man his sheep or cattle station, or whatever spot he may settle down upon as the arena of his enterprise, is to him, as it were, a “rood,” which if he does not personally superintend, cultivate, and improve, the means wherewith he is to maintain himself and those dependent upon him, cannot be supplied. Hence, then, the greater the merit, and the greater the obligation of the country, due to the Justices of Peace in this Colony, for their unbought sacrifice of time and labour—and for the generous self-devotion with which,—in the voluntary and gratuitous dispensation of justice,—they represent that old and venerated remnant of national authority in the parent country—the Magistracy of England.

As at the present Circuit Court there is no civil business to be transacted,—and we are to be engaged only in the investigation of criminal cases, the question naturally suggests itself what is the cause and source of crime? I think I may claim some authoritative right to answer that question correctly, as a person having had an experience second to few in this, or any other country in the administration of criminal law. For the first eight years of my residence in New South Wales, I had a

principal share in the professional business that consists in defending prisoners;—for the next eight, the duty devolved upon me of prosecuting them;—and for the last seven years I have filled the offices (with the interval of two years' absence in England) of Attorney-General and Judge of the Supreme Court in Port Phillip and in Sydney; and the result of that experience supplies to the question—what is the cause of crime?—the answer, “that intoxication is the hotbed from which crime springs.” Directly or indirectly, all crime is traceable to it—the exceptions being so few as to establish the general rule. If a dray is stopped and robbed on the highway, what is the first object of search?—the keg of spirits. If there be no spirits, the plundered property is converted into cash, speedily to be spent in intoxication. If a store in the country is robbed, the first plunder is that of the cask or the bottle that contains some intoxicating liquor. A quarrel, that after a short time,—with a little reflection,—would be forgotten by sober minds, is renewed and revived with fresh exasperation in the mind at a moment of intoxication, and a thirst created for the most disproportionate and dreadful revenge. At such a moment, too,—the jealous mind,—without any real ground of jealousy, converts remote suspicion into certain conviction, and so on through the whole range of the human passions. Indirectly, intoxication is the cause of crime by producing poverty, for, in this country, habits of inebriety constitute the main cause of it, as no man in this country capable of work is necessitously poor, who does not spend in intemperance those means by which he should support his family. Poverty again begets crime:—and thus from intoxication,—as from a parental source,—both derive their existence.

Of the many, very many disastrous illustrations of the truth of what I state,—with evidence of which our Criminal Courts abound—I will only now adduce two;—the first showing how drunkenness alters the whole nature of man, and transforms him who, in his sober moments was a humane man, into a downright demon.—And the second showing that it is

a vice from which, and the evil consequences it entails, rank or class is not exempt, and that wherever it prevails, its victim is always doomed,—though he may escape an ignominious fate,—to poverty, to degradation, and disgrace. Take then, first, the instance of the very last public execution in this colony. The criminal was the parish clerk and sexton of St. John's Church, Campbelltown. He was a person accustomed to the observances of religion,—and bore the character of an inoffensive neighbour. It happened, on the occasion of some trivial quarrel with his wife, he repaired to a public house, and there becoming maddened with liquor, he exclaimed, "Give me one half-pint of rum more—it is the last I shall ever drink." Within an hour from having drunk that last disastrous draught, he imbued his guilty hands in the blood of his wife and two children as they slept. For this monstrous crime, an ignominious expiation of his life was made upon the scaffold.—Yet, when the morning sun arose upon the day on which he did this foul and damning deed, there was as little reason to suppose that ere its close—he would have committed an act of such atrocity, as that any who now hear me, will, this day, be guilty of a like terrible perpetration.—This is the history of a drunkard's deed, and a drunkard's doom.

The second instance to which I refer is one of a painful, though less revolting character. It is the case of a person who was summoned before me,—when Commissioner of the Court of Requests of this Colony,—for a debt of £10, The defendant had been a field-officer—and had led into action one of our most gallant regiments in a memorable battle fought during the Peninsular war. He admitted the plaintiff's claim—it was a debt due to a baker for bread supplied to the defendant and his family. On being asked how he proposed to satisfy the demand, he said,—drawing from his pocket the gold medal awarded to field officers who led regiments into action at the battle of Albuera— "This is all that is left to me—I have no other means of

liquidating the debt.”—He then handed the medal to the plaintiff, who—paused but for a moment,—and with a prompt generosity that I never shall forget, and that touched deeply the feelings of all who heard him—addressed the defendant—“No,—you have won that medal nobly in the service of your country, and it shall never be said that I deprived you of it. I forgive you the debt, and, moreover, whenever you want a loaf of bread for yourself or the family, come to me and you shall not go without it.”—The whole scene was truly affecting,—and one is at a loss whether more to admire the noble generosity of the plaintiff, or to pity and deplore the degradation and deep sense of self-humiliation endured by the defendant,—a brave soldier, and a gentleman possessed of many accomplishments,—yet who, it was well known, by habits of intemperance had reduced himself to a state of poverty that obliged him to accept of the humble baker’s bounty, for the supply of the first necessary of life to his family.

Surely then the correction of this great evil should be the great object of all who desire to deserve well of their country. The encouragement of amusements and recreations, in which intemperance has no share, might do much in mitigating the mischief. Much has been done by Temperance Societies in weaning men from its pernicious influences. Indeed, I know of no nobler act of self-determination than that of a man bursting asunder, as it were, by a sudden wrench, the bonds that for years may have linked him to this detestable vice. Nor can I contemplate a more interesting spectacle than that of such a man with recovered health,—restored character,—and his affairs retrieved,—surrounded with the blessings of a happy family, and the congratulations of friends rejoicing at his redemption from intemperance. But much and most of all must we look to the spread and influence of religion, and of religion’s handmaid—education. It is very trite, but very true, to say, “train up a child in the way he should go, and he will not

---

depart from it in his old age." In every instance,—an educated man may not be a temperate man,—but in the majority of instances I believe he is so,—and in all it greatly contributes to make him so. An educated man never is alone. At home education is a resource and a consolation to him—abroad an ornament—in every business and transaction of life an aid and an advantage. It teaches him what examples to imitate—and what to shun,—and imparts a moral discipline to his mind, which are all unquestionably useful props and aids, conducive to the acquirement of temperate habits. So important has this great subject of education appeared to me, that they who aid in the advancement of the good cause of thus elevating the moral nature of their fellow-men will, in my judgment, be the best benefactors of the rising generation of this Country. To them will be deservedly awarded the largest share of public gratitude,—and the merited meed of lasting renown; —and what is more important still,— they will enjoy the consciousness of having endeavoured to render an important service to this community in a direction in which it is most required; for, next to the great blessing of the Redemption, the greatest blessing that Heaven has placed within the reach of man is that of a good moral and religious education.

With these observations, Gentlemen, we will proceed to the business of the Court.





## APPENDIX.

---

### A.

#### CHAMPLY'S AND SHIRBY'S CASE.

Of the very few instances of this kind which occurred within my experience, a very remarkable one occurred soon after my arrival in New South Wales. At the Campbelltown Assizes, in 1831, I was retained as Counsel for two prisoners, Champly and Shirby.

The crime for which they were indicted was burglary—then a capital offence—in the house of Mr. Atkinson, a respectable magistrate resident at Sutton Forest. The prisoners had been convicts, and were persons of indifferent character. They resided at about a mile distant from Mr. Atkinson's, and immediately suspicion fell upon them. Mr. Atkinson repaired to their house on the morning after the burglary, and discovered there tea, sugar, a bag of peas, soap, leather, and other articles corresponding to the description of property taken from his store at the time the burglary was committed. At the trial, he swore positively as to the identity of the property. It was in vain I endeavoured by cross-examination to shake his testimony as to the impossibility of identifying property of this description. There was no mark by which he could satisfactorily distinguish it from property of the same description, which all residents at a distance from Sydney might be presumed to have in their houses, as necessary and usual supplies for their families and persons in their employment. The prisoners were found guilty, and sentence of death pronounced upon them. A few days previous to that appointed for their execution, I prepared and transmitted to the Executive Government, a petition on their behalf, setting forth, that as the store into which the breaking was effected was detached by a party-wall from the dwelling-house, and there was no communication between the store and the house—the capital part of the charge must fail, and their lives were not thereby legally forfeited for the offence. General Darling—then Governor—communicated with the three Judges of the Supreme Court,—and the result was, the sentence commuted to transportation to Norfolk Island for life.

Two years afterwards a desperate bushranger, named Webber, was apprehended. After his trial, and whilst lying in the condemned cell, he sent an earnest request, through the sheriff, to me, to see him in gaol. I complied with his request. On seeing him, he stated in substance:—"Sir, as to me, my life is forfeited, and I am prepared to die; but, before I leave this world I am desirous of informing you that the men whom you defended two years ago, for a burglary, at Mr. Atkinson's, are as innocent of that offence as yourself. The burglary and the robbery were committed by me and by me alone. I had been, when first transported to this colony, an assigned servant of Mr. Atkinson, and absconded from his service. I knew well the ways of his place, and whilst engaged in robberies in the *busk* I happened to be in the neighbourhood of his house, and I effected an entry, and removed all the property to the identity of which he swore at the trial. It was about two o'clock in the morning when I broke into the store, and by the time the whole of the property was removed, the day began to dawn, and as I could not take it away I *planted* (placed) it partly under a heap of stones within one hundred yards of the house, and partly in the hollow of two large withered trees near the heap of stones. Since that time I have not been near the place, and there I am sure it is to this day."

Mr. Atkinson happened to be in Sydney, and I requested him to accompany me to the cell of Webber, who repeated the same statement to him in my presence, —and on Mr. Atkinson's return home, he found the whole property disposed of as Webber had stated to him. On a representation of these facts Champly and Shirby were brought back from bondage in Norfolk Island, and restored to liberty.

---

B 1.

### LYNCH'S CONFESSION.

The guilty career of John Lynch—originally transported from Ireland—is perhaps unequalled in the history of human crime. Any one of the dark deeds he committed would deservedly entitle him to be ranked amongst the Thurtells, Rushes, and other most execrated names in the criminal calendar:—but, the series of such deeds,—which he admits he perpetrated with cold-blooded atrocity,—defies the page of history to produce a parallel. At the time of his trial he was, apparently, about thirty-two years of age. His appearance and manner were not only not of a forbidding, but of a mild and prepossessing character. Though undefended by counsel,—he conducted his own defence with self-possession and coolness, and with remarkable ingenuity. The true character of this monster, however, may be learned from the following extracts from "The Confession of John Lynch," made

from his own lips before Mr. Bowen, Police Magistrate of Berrima, on the day previous to his execution.

He first minutely detailed the circumstances attendant on the murder of two persons whom he met on the road and whose company he joined. These two persons—one a black boy—were driving a dray belonging to Mr. T. Cowper, laden with bacon and other articles for the Sydney Market. Lynch killed them with an axe as they lay asleep—hid the bodies under a heap of stones—proceeded to Sydney, and sold the articles on the dray in Sydney, and on his return up the country in sole charge of this empty dray—he proceeded to state—he fell in with two Frasers (father and son) and thus describes his manner of making their acquaintance, and his mode of dealing with them :—

“ While encamped (he states) at Bolland’s, at the Stone-quarry, the two Frasers came up with Bawtree’s horse team and dray. We sat together by the fire, had a great deal of talk, and as usual, I told them as many lies as suited my purpose, and managed to get from them an account of the whole of their and their master’s concerns, as well as of the valuable load they had on. But I had then no intention of doing them any harm. We travelled together next day, and I was enabled to afford them great assistance in getting on their tired horses, for neither of them could drive well, and I was clever in the management of draft cattle. We encamped in Bargo Brush, by the side of the road, and a cart with two men and a woman afterwards joined us. When we were all lying down, and, I believe, all but myself asleep, a man on horseback rode up, and made particular enquiries about Mr. Cowper’s dray—describing it exactly, and telling the whole history of its disappearance, as well as that of the driver and black boy. I lay still, and did not speak a word, but Fraser—the old man—got up—between asleep and awake, and answered something at random. The rider then asked the distance to the nearest inn and went on. ‘ *Who!* said I, this is sharp work,—this will never do,—I must get rid of this dray, and obtain another somehow.’ I had the whole night to think over the matter, and to form my plans. So in the morning I went under the pretence of looking for my bullocks, but in reality of driving them away into a deep gully. I strangled the dog belonging to Mr. Cowper’s bullock driver, and staid away long enough to allow the other cart with the two men and the woman to leave.—knowing that the Frasers—who seemed greatly to desire my company from the assistance I could give them in managing their teams,—would wait for me. When I returned, I told them that my bullocks were nowhere to be found, and I had no doubt they had gone to their own home—up the country beyond Berrima. I consulted with them what I had best do, and we agreed that I should leave my dray there, since it was nearly empty, and go on with them for the bullocks, as they offered to take the few things I had on their dray. We encamped for this night in a flat on the other side of Cordeaux’s Hill.”

He did not tell me, writes the magistrate, why he allowed the night to pass without perpetrating the intended murder of the Frasers, but—“ In the

morning," said he, "young Fraser went over the ridge to get in the horses, and I volunteered to go with him and assist. It was cold, and I put on a pea-jacket,—not to keep me warm, however, but to conceal an axe which I held under my arm. When I got up to young Fraser, I had no difficulty in obtaining the opportunity I wanted. I gave him one crack on the head, and he just dropped like a log of wood. If people knew how easy it is to take away life, things of this kind would happen oftener. I then returned to old Fraser, who remained with the dray, and began yarning to him. After a time he began to wonder what had become of 'Wully'.—I had my axe all right, but would not strike until I could make sure. At last he turned his head, and down he went. The next business to attend to was the getting rid of the bodies. I dragged the old one some yards out of the way, lest persons passing through the flat might come upon it, and then returned to the body of the son. With a spade I got from the dray, I dug a hole and buried him; afterwards I buried the father in the same manner.

"By the time I had finished, the day was far advanced,—so I thought it better to stop there for the night. By the evening of the next day I got to Mulligan's. I had no notion of trusting them, or indeed anybody, so I amused them with an account of my being hired to drive up the dray for a gentleman in Sydney. The family consisted of—the old man, Mulligan—Mrs. Mulligan, who lived with him but was not his wife—her son, a lad of about eighteen—and her daughter, a girl of about fourteen. Mrs. Mulligan seeing chests of tea on the dray, said she was out of tea, and proposed to buy a chest of me. At first I reminded her of the bad faith they had kept with me before, but pretended at length to bargain with her. But this was only my craft, you should know, for I had no notion of letting her have any of the property, I only wanted to know how much money they had in the house. She said they had £9. We did not come to any agreement, but I let them hope they would get some of my master's property. The next day, in the afternoon, I pulled out a note (£1) and sent to Gray's public-house for rum to treat them. In the evening we drank together and got very sociable, but I took care not to drink much. Well! thoughts were in my head, and the time was coming on; I began to feel very disturbed, and I walked out of the hut. It was a clear, cold, windy night, I looked up at the bright moon, and I prayed to Almighty God to direct me!! I said to myself, I am an injured man, and the Mulligans have defrauded me of what I perilled life and liberty to obtain. That fellow, when I was starving in the Berrima Iron Gang, has often passed me by without so much as giving me a shilling, when he had many pounds which were justly mine in his hands. And now, would it not be right that they should lose all they possess as a judgment upon them for withholding his own from the poor prisoner? Heaven guide me and point out to me what to do.\* Well, I went into the house again

\* This profane and impious expression contrasts strangely with the temptation, under which he acted when he murdered Mr. Cowper's drayman and the black boy. He there states—"If there be such a thing as the devil, he was busy with me, and would not leave me alone: it was as if somebody was tugging at me."

and we had another glass of rum round. Now it was a cold, windy night, so I took up the axe and said I would go and cut a few barrow loads of wood for the fire, if John (meaning the young man) would wheel them in. We went out and had some talk whilst I was cutting up. He said that Mulligan was an old man, that he should have the farm at his death, and that God Almighty would soon take him away, adding that if he did not he (John) would give him (mayhap) a helping hand. I was shocked to hear him speak in this way, knowing how near he was to his own departure out of this world; so I said, "ah! John, you should not speak in that way, you don't know what may be in store for yourself." At this time he had taken in two loads in the barrow, and was come for the third. I had just finished my work, so I took the axe, gave it a back-handed swing against his skull, and threw it down. I threw a quantity of boughs over the body, and went back to the hut. We had another glass together, and the mother inquired for her son. I said he had offered to go into the bush to see if my horses were right. After a time she began to wonder that John did not come back, and to be very fidgetty. This bothered me. She also mentioned a dream she had the night before,—she thought she had an infant child, and that she had seen this child horribly mangled and covered with blood. I hated this old woman, for she used to toss cups and balls, and could foretell things. Well, nothing would satisfy her but she must go to the door and cooeey.\* She cooeeyed for John, but no John came, and at last she would not even drink—then old Mulligan said, 'perhaps the lad is lost in the bush;' and took his gun outside to fire, for the purpose of directing him as to the position of the hut; it did not suit me to have neighbours drawn to the house, so I said to Mulligan—'you had better not fire,—people will come,—perhaps the police, and if we are to deal, it won't answer that the dray should be seen here.' 'Truth, lad, that's a right thought of you,' he answered, and instead of firing, folded his arms, holding the gun with the muzzle pointing up. Well! there was no quieting the old woman, and I had my eye upon her inside, at the same time that I was standing by Mulligan outside. I saw her take out a large knife and conceal it in her own clothes, and then give it to the little girl; there was no time to be lost—I had left the axe on the ground when I had cut the wood, but my own with which I had such good luck with the other four, was in the dray;—but then, how to get it without shewing my intent—but I never was at a loss in the scheming line, so I pretended that a dog I had got was troublesome, and took him to tie him to the wheel of the dray; this gave me an opportunity of getting the axe and placing it unperceived under my thick coat. By this time the old woman, who seemed bewitched, would be content with nothing short of going outside and looking for her son; she went towards the spot and began moving the boughs which covered the body—now or never thought I—I prayed to God to help me!!! determined to succeed or perish in the

\* A common mode of calling in Australia, which by keeping up a long drawl on the first syllable *coo*—and uttering the last syllable *ey*, in a loud and sharp tone, is heard at a great distance in an Australian forest.

attempt—and kept my eye upon Mulligan who was close beside me—he turned his head—one blow and down he went. I then hastened towards the old woman—she was in the act of returning, having found her son's body, but playing the cunning, she said, 'Lord! what brings the police here, there are three of them getting over the fence.' I was not to be gulled that way, so I gave her my foot, which staggered her, and then brought her down. None now remained but the little girl—the poor little thing had never done me any injury, and I was really sorry for her—I went into the hut where she remained and I said to her—'Now my little girl! I will do for you what I would not for the others, for you're a good girl, you shall have ten minutes to say your prayers.'"

Here (says the Magistrate) Lynch paused, as if he had a difficulty in going on. I suppose it might be a feeling of remorse, and I could easily imagine that the scene of the child begging for life must have been a most pitiable one. — I therefore ended the pause by saying,—“In short you killed her, and with the axe.” He said, “I did,”—upon which I bid him proceed. “I now,” he proceeded, “began to consult with myself as to the best mode of disposing of the bodies. If I buried them in a frequented neighbourhood, like that, it was likely that the graves might be discovered. There were plenty of Wombat\* holes near at hand, but it would be troublesome to carry all the bodies, and the native dogs might pull them partly out. I felt an aversion to the thought of burning the bodies of my fellow-creatures—it seemed such inhumanity,—but then I considered that the poor things could feel nothing, and that it was little odds to them whether they were burned or buried. I therefore put them upon a heap of logs close to the house,—where the Mulligans had been burning off a piece for potatoes. When the fire was well made up, I was surprised to see how the bodies burned. They flared up as if they were so many bags filled with fat. It was an awful thing to stand alone in the dead of night and to see the four bodies burning to ashes. By morning there was nothing left but a heap, like of slacked lime,—I took it up in my hand, and buried it in another part of the paddock. I may have left, perhaps, some ends of bone behind. I then burned the greater part of the Mulligans' clothes, and made such alterations in the house as I judged necessary;—for I had still a difficult card to play, and must satisfy the neighbourhood that I had become rightfully possessed of the farm, horses, and cattle.†

“The first thing I did was to go to Gray's Inn and ask to see him. On his coming out I inquired of him, with seeming concern, what kind of a man Mulligan was in his dealings. I knew his answer would be an inquiry why I asked. I said that I had just come from Sydney, where I had met

\* A small quadruped, peculiar to New South Wales, that burrows in the ground, somewhat in the manner of rabbits in England.

† At his trial, Lynch applied to the judge (Sir J. Dowling) to have these horses and cattle sold to defray the expenses of counsel;—but, as Attorney-General, I successfully resisted the application, as I had information at the time of his trial for the murder of Landregan, that he became possessed of this property by the means of his murdering the Mulligan family.

Mulligan and concluded a bargain with him, - but that he had failed to deliver the cattle as he had promised. Knowing by Mulligan's papers the persons to whom he probably owed money, I took care to go to them, and make similar inquiries. Some of them seemed to look down upon me as a kind of flat, and that Mulligan had taken me in. I acknowledged that I had lent him a valuable mare, which had cost me eighty guineas, and pretended to look very blank when it was hinted that perhaps I might never see my mare again. Some thought that the whole thing was made up between Mulligan and his landlord, 'Smith,' for some fraudulent purpose of their own.

"I then went to Sydney, called at the *Gazette* Office, and pretending to be Mulligan, paid for an advertisement in his name, to the effect that his wife having absconded from her home, he would not be answerable for her debts. I then wrote several letters in his name to persons in the neighbourhood of his farm, being chiefly arrangements about money matters, - for I had collected enough of his affairs to be able to word them in a suitable manner. When I returned to Wombat Brush, all these things were told me as so much news, and I appeared to be a victim. I afterwards wrote a letter to myself, in Mulligan's name, as from Illawarra, and employed a man to put it for me in the Campbelltown post-office, and this I shewed about. The stupid fellow, however, not knowing my meaning, put it in Liverpool instead, and thus the postmark," he added, smiling, "enabled you, Sir, to detect the trick after I was apprehended. But it answered well with the neighbours. A man on the next farm, who at first troubled me with a great many awkward questions, was at length so satisfied that all was right, that he wanted me to marry his daughter.

"I have mentioned these things all at once to account for my being allowed to enter, without dispute, into the possession of the Mulligans' property. I succeeded in throwing dust into everybody's eyes. Even the officer of the Mounted Police, and his three troopers, who called at the hut a few days after the murder, went away quite satisfied. But before I took all these steps I went down to Appin, with a light cart and two of Bawtree's horses, to fetch up Barnett and his wife, who had been fellow-servants with me at M'Evoy's there. I had promised, when I parted with them, if I met a situation they would like, I would let them know. I accordingly described to them the Mulligan family, and hired them in Mulligan's name. I left them the cart and one horse to bring them up. I selected them because they were immigrants, and simple people. They would believe anything you told them. I had therefore no difficulty in accounting to them for the absence of the Mulligan family. I told them that Mulligan and his wife had had a row, and that he had turned them out; and that he had been obliged to go to the Five Islands and hide, on account of a horse found in his possession which was all wrong (that is, stolen).

"I was now comfortably settled, made improvements on the farm, determined to clear and fence an additional paddock, and intended to live honestly and do every thing fair and square,—but I was obliged to go down



the country to settle things with Smith, then the landlord. He was a knowing shaver,—but I was at least as deep as he,—so we arranged matters to the satisfaction to us both.

“Returning home on one occasion from Sydney, on the 18th of February, last,—I encamped on the north side of Razor-back. In the morning, while on the point of starting, I was met and accosted by a strange man who seemed very free and open in his conversation, and said that he wanted to get out of the way, and that it might not be known where he was going. ‘Why?’ I said, ‘you do not look like a bushranger.’ ‘No,’ said he, ‘I’m an emigrant from Ireland, and have just quarrelled with my wife, and have sworn never to live with her again.’ I wanted a man to help to put up some fencing. Now this was a pretty (*i. e.* strong built) man, and had the look of a good man for working, and being simple enough to all appearance, seemed just the fellow to suit me. I spoke him fair,—and after some more talk I hired him for six months for £15. This was Kerns Landregan, the man on whose account I am about to suffer. At the time I speak, I had not the most distant intention of doing him an injury. We proceeded together towards Berrima. I gathered more from him on the way,—he said that he and his wife had earned together as much as £8 per week, up the country, during the last harvest. On my saying it was a large sum,—he said that he could work against any man, and his wife was accustomed to work too. She used to bind the sheaves for him. On his parting with her he had stuck to the money (that is, kept it himself). I said, ‘Is she your lawful wife?’ He replied, ‘Yes.’ ‘And can you,’ said I, ‘defraud your own lawful wife of the money she has hardly earned by the sweat of her brow?’—I would myself take a musket and rob upon the highway sooner than be guilty of such cruelty. I tried to persuade him to give her some of his money, but he was obstinate. When we passed Bolland’s, where his wife was staying, I saw her, while he hid himself under some clothes in my cart. I then again tried to persuade him to give his wife her own proper share, since he had parted from her, as he declared, for ever. But he had no feeling for her, and my heart began to turn against him, and to feel a hatred for him as a selfish and hardhearted man. When we got to Crisp’s he hid himself again, and on my asking all about it as we got on the road, he gave me an account of his having accused Mr. Crisp, before the magistrates, of stealing a bundle that he had left at the house. From his account I perceived he was a kind of lawyer, and fond of Court. Besides, on getting better acquainted with him, I found he was by no means simple, as I at first supposed, but had a deal of cunning about him.—I was sorry that I had hired him, and would have got rid of him at once, but, as ill luck would have it, having nothing about me but orders, which I could not get cashed at Stone-quarry, I had borrowed a one-pound note of him,—I tried every where in vain to change my orders during the day, but could not;—I was even obliged to borrow another one pound note from him. Towards sundown, two men with bundles joined us on this side of Nattai Bridge, and expressed their intention of camping with us for the night. But this did not suit me, so that I spoke

roughly to them, on which they were offended and went on. We encamped (Landregan and I) on the spot well known to you, Sir, and then I began to think what I should do; I was greatly agitated, and could not close my eyes, while the other fellow slept like a pig. What was I to do? If I took this fellow with his law to the farm with me, it would certainly be my ruin, for after using his wife as he had done, he would not stop at informing against me; even if I got money in Berrima (which I could do), and paid him his two pounds, telling him at the same time to be off, he would have me up to Court for a breach of agreement, and then the magistrate might ask questions. We had been seen together by so many people on the road that there would be a great risk in killing him: but, every thing considered, it seemed the safest and best plan after all. He deserved it for his ill usage of his wife, and he had some money in his pocket, although it was not for his money I killed him. I passed the night thinking over these thoughts, and on the next morning, after putting to the horse, I set my eye upon him. He was a powerful made man, I—small,—as you see I am,—and he had boasted to me that since he was fifteen or sixteen years old he had never met the man that could throw him. Well! my man, thought I, I fancy I shall be able to settle you notwithstanding your fine limbs. He had just laid down the tomahawk with which he had been cutting a little wood to make up the fire. I took it up without his perceiving me. ‘Now I must mind what I am about, for if I do not hit fair, and he tackles with me, I shall be done.’ He sat astride on the long log on which our fire was, smoking his pipe, thinking of nothing, his head was a little turned from me—I gave him one blow and he fell, and then another when he was down, but the first settled him. I then hid the body under some bushes, where it was found next day, stripping off all the clothes to the shirt and hiding them.—I intended to have returned as soon as I conveniently could, and buried the body—but my time was come, and I can see the hand of God in my detection, for I well remember taking off the belt (the discovery of which in my house, was the strongest thing against me at the trial) and throwing it into a small hole of water, but afterwards perceiving the end of it above the water, and fearing to leave it there I pitched it into the cart, and never thought of it since. This was Sunday—I returned home, and on the Tuesday I was apprehended by your orders. You know, Sir, how by degrees, everything then came out.”—

---

---

## B. 2.

## BLACKSTONE'S CASE.—AN INCORRIGIBLE CONVICT.

Blackstone was the most incorrigible convict that came under the range of my experience in New South Wales. This man was by trade a blacksmith.—He was transported to this colony for burglary—then a capital offence—but his sentence was commuted to transportation for life. Soon after his arrival here, he planned, with a gang of burglars of whom he was the leader, a most ingenious and daring burglary for which he furnished the jemmies—crowbars and other instruments of crime. By the means thus supplied—chiefly of his own manufacture—he succeeded in breaking into the money-vaults of the Bank of Australia, and stealing therefrom in coin and notes a sum little short of £6000.—The robbery remained undetected for some years.—In a short time after its perpetration, Blackstone was engaged in another burglary, of which he was convicted, and sentenced to death—which was again commuted to transportation for life to Norfolk Island. After having been there for eighteen months or two years, he intimated to the authorities of the island that, if released from the sentence he was then undergoing, he would give full information as to the Bank robbery. Accordingly, he was admitted an approver—was brought up to Sydney—and at the trial gave evidence so irresistibly conclusive against the prisoners—his former confederates in guilt—that though cross-examined for nearly four hours by Mr. Foster and myself, who defended the prisoners, they were found guilty.—Sentence of death would have been passed upon them but for an argument raised by counsel on their behalf, that they could not have been found guilty but for the testimony of the approver, which it was contended was legally inadmissible,—that approver being at the time a convicted felon. The Bench were divided on the point, and “Death recorded” was therefore the sentence;—and under it the prisoners (Dingle and Farrell) were sent to Norfolk Island for life. Blackstone was amply rewarded for bringing this burglary to light. He obtained a free pardon,—a free passage to England,—and one hundred sovereigns. Strange to say, however, a week previous to the sailing of the vessel in which he was ordered a free passage,—he was again detected in the perpetration of another burglary in a merchant's store in Sydney!! for which he was for the *third* time sentenced to transportation for life. I understand he died soon afterwards in Norfolk Island.

Another very remarkable incident connected with the case of the Bank robbery is, that on my appointment as Resident Judge of Port Phillip, one of the first prisoners brought before me for trial, was Farrell, who had been fifteen years before convicted for the Bank robbery! By the system of indulgence and remission then in vogue, he had obtained a remission of his sentence,—was sent to Van Diemen's Land, from which, on becoming free,

he found his way to Melbourne. He had been but a short time there, when, on being convicted of burglary, he was again sentenced to transportation for fifteen years. No portion of the money stolen from the Bank was recovered,—and this exemption from detection, as to the plunder, no doubt greatly encouraged and hardened these guilty men into a love of the criminal pursuit in which they perseveringly engaged, whenever an opportunity for the commission of similar crime presented itself, but which—as in like cases—the sometimes slow, but always sure, hand of retributive justice overtook, and effectually punished.

## SPEECH.

---

ON the fourth day of the Assizes, The Magistrates, professional and other gentlemen of the district entertained the Judge and the Attorney-General at a public dinner; Captain Wickham, R.N., Police Magistrate, in the chair.

On the health of the Judges of the Supreme Court being drank,—

Mr. Justice THERRY said :—Sir, on behalf of the Judges of New South Wales I thank you for the manner in which you have proposed our health,—and you, Gentlemen, for the manner in which you have received it. I am not so vain or mistaken as to suppose that the hospitable entertainment—to which you have invited me—is to be attributed to any personal desert of mine, but that it becomes me to regard it as a tribute of respect to the office I represent. Having thus succinctly and sincerely thanked you,—allow me to take this opportunity of expressing the great gratification I have derived from my present visit to your highly-favoured district. My expectations certainly were high :—but the reality of the scene greatly surpasses the expectations that rumour and description had inspired.—When from an eminence I behold the noble river that encircles Brisbane—the rich and fertile tongue of land stretching into its waters—the beautiful bend of the shaded banks that enclose its broad and deep current just above your town—and the bluff range of wood-covered hills rising in

varied and graceful elevation in the distance—as if placed there by nature to decorate the whole view,—I feel that I am in the presence of a scene that cannot be exceeded in the loveliness of its landscape ;—and when I am further assured, that your district abounds in views quite as magnificent, I feel that I tread a soil as beautiful and fertile as its climate is salubrious and healthful, and that I am justified in exclaiming,

—— A lovelier land  
Our Sovereign hath not at her command.

With natural advantages such as these,—I cease to wonder that a settlement of such recent formation has so rapidly grown in population, property, and general importance, as it has done. It may be truly predicated of Moreton Bay that it has wonderfully advanced to a precocious maturity. Like the fabled goddess Minerva, who, we are told, sprung from the head of Jupiter, and at the moment of her birth started into the fulness of beauty and loveliness of life at its prime,—of this district it may be said that, at its very existence, it assumed the position and put on the appearance of a full-formed and long-established settlement.

It may be permitted me now to allude to the immediate occasion of my present visit. And on this subject I have to express the great satisfaction I derived from finding before me a numerous magistracy composed of educated gentlemen of England,—and my thankful acknowledgment of the aid afforded me in the administration of justice, by the remarkably punctual attendance of intelligent jurors, who gave that attention to the cases they had to try, which fully evinced they were duly mindful and conscious of the important trust reposed in them.

Where all that meets the eye is worthy of commendation and of praise, it may seem invidious to make selection. But as in all well-wrought compositions some feature stands prominently out that arrests attention,—I feel impelled by a

sense of justice to express, especially, my acknowledgment to Captain Wickham, on whom the arrangements for this Circuit devolved,—and who has provided with admirable efficiency, for the holding of a Circuit Court here.

Again,—Gentlemen,—allow me to thank you for your hospitable reception of me—and be assured I shall always look upon my visit to Moreton Bay as one of those pleasant events of life on which memory loves to dwell ;—and I wish you all the long enjoyment of that prosperity and health of which your fertile district and salubrious climate give reasonable promise and assurance.







.

